

NATIONAL ASSOCIATION OF
PUBLIC TELEVISION STATIONS

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David J. Brugger
President

March 8, 1990

Mr. James P. Mooney
President & CEO
National Cable Television Association
1724 Massachusetts Avenue, NW
Washington, DC 20036

Dear Jim:

Following up on our meeting yesterday, my understanding of our agreement which you will take to your board for approval is the language NAPTSS has proposed except that:

- a) for cable systems with a channel capacity of 36 or less channels, they will continue to carry the public television signals now being carried, regardless of the quantity now being carried; and
- b) for cable operators with a channel capacity of 36 or less channels, the number of public television signals to be carried will be capped at three (3); except that
- c) if and when the cable system operator upgrades to a larger channel capacity, the operator will carry any additional qualifying public television signals; and
- d) if the operator must pick up public stations not now being carried, the operator can use an unoccupied P.E.G. channel, subject to approval by the local franchising authority.

As stated, public television is not a party to the so called "if carry, must pay" proposal. Our issue is one of access for public television services with substantial government interest. We believe the public has a right to the services they already fund through their tax dollars, regardless of the distribution technology.

APTS 010135

Mr. James P. Mooney
March 8, 1990
Page Two

You will also propose to your board, on a voluntary basis and outside the legislation, that cable operators agree to a voluntary funding check-off for public television as part of their monthly billing to subscribers. These funds would be used for public television programing.

Thank you for your efforts and working with us to achieve a workable and equitable agreement between cable and public television. It is a natural extension of the admirable working relationship enjoyed by the overwhelming majority of both our memberships.

Sincerely,



David J. Brugger
President

JH2:DJ

APTS 010136





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**NAPTS, NCTA REACH MUST-CARRY AGREEMENT,
GUARANTEEING CONTINUED CABLE CARRIAGE OF PUBLIC TV STATIONS**

The National Association of Public Television Stations and the National Cable Television Association today announced that they will jointly recommend to Congress a must-carry proposal aimed at ensuring continued carriage of local public television stations on local cable systems.

The Federal Communications Commission's most recent must-carry rules required cable systems to carry at least one, but no more than two, public television stations, based on each system's channel capacity. That rule was overturned by a federal appeals court in December 1987. The NAPTS/NCTA legislative proposal, if enacted, would result in a federal must-carry law for local public television services.

"Public television is supported by all Americans with their tax dollars and this agreement reinforces the principle that the public should have unfettered access to all their public television services," said David Brugger, NAPTS President. "We are pleased with the continued cooperation between cable and public television that gives the public maximum choice in quality programming."

"Because the public has a right to the services they already support, regardless of the distribution technology, we believe this agreement satisfies our long-term interest in guaranteed access in ways an 'if carry-must pay' proposal would not," Mr. Brugger added.

"Local cable systems and public television stations for years have been involved in mutually beneficial, cooperative ventures,

(more)

FOR IMMEDIATE RELEASE
3/28/90 (NR/26/90)

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APTS 00124

and it's important that this same spirit of cooperation continues at the national level," said NCTA President James P. Mooney.

"From the outset, it's been the intention of both our industries to put in place a pure and simple must-carry rule," Mr. Mooney added, "and through good-faith negotiations, we have reached a workable compromise guaranteeing that this important form of television will remain an integral part of cable's basic programming package."

The agreement between the two industry associations would expand the FCC's previous must-carry rules. Cable systems would continue to carry all local noncommercial educational public television stations they currently carry. A station would be considered "local" if it is located within 50 miles of a cable system's principal headend, or if it casts a Grade-B contour over that headend.

Also, cable systems with 12 channels or fewer would be required to carry one public television station. Systems with 36 or fewer channels now would have to carry up to three local stations; under the previous rules, systems with 54 or fewer channels had to carry only one public television signal.

Systems with more than 36 channels would have to carry no more than three local public television stations, unless the additional local public television stations contain non-duplicative programming or unless the cable systems currently carry more than three local public television stations. Under the previous must-carry rules, no cable system was required to carry more than two public broadcasting signals.

Moreover, while local public television services would be carried on a cable system's basic tier, there would be no channel positioning requirement "in deference to the request of Senator Daniel Inouye that the Federal Communications Commission be allowed to take the issue under advisement," NAPTS and NCTA stated.

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APTS 001250

The agreement also would ensure that program-related material on a local public station's vertical blanking interval and subcarrier, such as descriptive video for the blind and closed captioning for the hearing impaired, would be retransmitted by cable systems.

#

101ST CONGRESS
2D SESSION

H. R. 4415

To amend the Communications Act of 1934 to protect and promote carriage on cable television of distinctive noncommercial, educational television services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 1990

Mr. DINGELL (for himself, Mr. LENT, Mr. MARKEY, and Mr. RINALDO) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Communications Act of 1934 to protect and promote carriage on cable television of distinctive non-commercial, educational television services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Public Television Cable
5 Carriage Act of 1990".

6 **SEC. 2. FINDINGS.**

7 The Congress finds that the distribution of unique non-
8 commercial, educational programming services, including

1 those transmitted by noncommercial educational television
2 stations serving local communities or markets, advances a
3 compelling national interest in providing for the further edu-
4 cation of our citizens and encouraging public telecommunica-
5 tions services which will be responsive to the interests of
6 people both in particular localities and throughout the United
7 States, which will constitute an expression of diversity and
8 excellence, and which will constitute a source of alternative
9 telecommunications services for all the citizens of the Nation.

10 **SEC. 3. DEFINITIONS.**

11 Section 602 of the Communications Act of 1934 (47
12 U.S.C. 522) is amended—

13 (1) by striking “and” at the end of paragraph
14 (15);

15 (2) by striking the period at the end of paragraph
16 (16) and inserting a semicolon; and

17 (3) by adding at the end thereof the following:

18 “(17) the term ‘qualified noncommercial educa-
19 tional television station’—

20 “(A) means any television broadcast station
21 which—

22 “(i)(I) under the rules and regulations of
23 the Commission in effect on March 29, 1990,
24 is licensed by the Commission as a noncom-
25 mercial educational television broadcast sta-

1 tion and which is owned and operated by a
2 public agency, nonprofit foundation, corpora-
3 tion, or association; or

4 “(II) is owned or operated by a munici-
5 pality and transmits only noncommercial pro-
6 grams for educational purposes; and

7 “(ii) has as its licensee an entity which
8 has been qualified by the Corporation for
9 Public Broadcasting, or any successor orga-
10 nization thereto, to receive a community
11 service grant, or any successor grant thereto,
12 on the basis of the formula set forth in sec-
13 tion 396(k)(6)(B) (47 U.S.C. 396(k)(6)(B));
14 and

15 “(B) includes any translator, as defined in
16 section 74.701(a) of title 47, Code of Federal
17 Regulations (as in effect on March 29, 1990), or
18 any successor regulation thereto, which operates
19 with five watts or higher power and which re-
20 broadcasts the signal of a qualified noncommercial
21 educational television station; and

22 “(18) the term ‘qualified local noncommercial edu-
23 cational television station’ means a qualified noncom-
24 mercial educational television station—

1 “(A) which is licensed to a principal commu-
 2 nity whose reference point, as defined in section
 3 76.53 of title 47, Code of Federal Regulations (as
 4 in effect on March 29, 1990), or any successor
 5 regulations thereto, is within 50 miles of the prin-
 6 cipal headend of the cable system; or

7 “(B) whose grade B service contour, as de-
 8 fined in section 73.683(a) of such title (as in effect
 9 on March 29, 1990), or any successor regulations
 10 thereto, encompasses the principal headend of the
 11 cable system.”.

12 **SEC. 4. REQUIREMENT TO CARRY NONCOMMERCIAL EDUCA-**
 13 **TIONAL TELEVISION STATIONS.**

14 Part II of title VI of the Communications Act is amend-
 15 ed by adding at the end thereof the following new section:

16 **“CARRIAGE OF NONCOMMERCIAL EDUCATIONAL**
 17 **TELEVISION STATIONS**

18 **“SEC. 614. (a)** Each cable operator shall carry, on the
 19 cable system of that operator, the signals of qualified non-
 20 commercial educational television stations in accordance with
 21 the provisions of this section.

22 **“(b)(1)** Subject to paragraph (2) of this subsection and
 23 subsection (e), each cable operator shall carry, on the cable
 24 system of that operator, each qualified local noncommercial
 25 educational television station requesting carriage.

1 “(2)(A) Notwithstanding any other provision of this sub-
2 section, a cable operator of a cable system with 12 or fewer
3 usable activated channels shall carry on that system only one
4 qualified local noncommercial educational television station,
5 but such operator shall comply with subsection (c) and may,
6 in its discretion, carry on that system other qualified noncom-
7 mercial educational television stations.

8 “(B) In the case of any cable system with 12 or fewer
9 activated channels which operates beyond the presence of
10 any qualified local noncommercial educational television sta-
11 tion—

12 “(i) the cable operator of such system shall carry
13 on that system one signal of a qualified noncommercial
14 educational television station;

15 “(ii) the selection for carriage of such a station
16 shall be at the election of the cable operator; and

17 “(iii) in order to satisfy the requirements for car-
18 riage specified in this subsection, a cable operator of
19 such system shall not be required to remove any other
20 programming service actually provided to subscribers
21 on March 29, 1990, except that such cable operator
22 shall use the first channel available to satisfy the re-
23 quirements of this subparagraph.

1 “(C) Subject to subsection (c), in the case of a cable
2 system with 13 to 36 usable activated channels, the cable
3 operator of such such system—

4 “(i) shall carry on that system at least 1 qualified
5 local noncommercial educational television station but
6 shall not be required to carry more than 3 such sta-
7 tions; and

8 “(ii) may, in its discretion, carry on that system
9 additional such stations.

10 “(3) A cable operator of a system described in para-
11 graph (2)(C) of this subsection which increases the usable ac-
12 tivated channel capacity of the cable system to more than 36
13 channels on or after March 29, 1990, shall, in accordance
14 with the other provisions of this section, carry on that system
15 each qualified local noncommercial educational television sta-
16 tion requesting carriage, subject to subsection (e).

17 “(c) Notwithstanding any other provision of this section,
18 all cable operators shall continue to provide carriage to all
19 qualified local noncommercial educational television stations
20 carried on their systems as of March 29, 1990. The require-
21 ments of this subsection may be waived upon the written
22 consent of the cable operator and any such station.

23 “(d) A cable operator required to add the signals of
24 qualified local noncommercial educational television stations
25 to a cable system under this section may do so by placing

1 such additional stations on public, educational, or governmen-
2 tal channels not in use for their designated purposes.

3 “(e) A cable operator of a cable system with a capacity
4 of more than 36 usable activated channels which is required
5 to carry three qualified local noncommercial educational tele-
6 vision stations shall not be required to carry additional such
7 stations if the programming of such additional stations sub-
8 stantially duplicates the programming broadcast by another
9 qualified local noncommercial educational television station
10 requesting carriage. Substantial duplication shall be defined
11 by the Commission by regulation in a manner that promotes
12 access to distinctive noncommercial educational television
13 services.

14 “(f) A qualified local noncommercial educational televi-
15 sion station carried by a cable operator shall not assert any
16 network nonduplication rights it may have pursuant to sec-
17 tion 76.92 of title 47, Code of Federal Regulations, as in
18 effect on March 29, 1990, to require the deletion of programs
19 aired on other qualified local noncommercial educational tele-
20 vision stations carried by that operator.

21 “(g) A cable operator shall retransmit in its entirety, on
22 the cable system of that operator, the primary video and ac-
23 companying audio transmission of each qualified local non-
24 commercial educational television station carried on the cable
25 system, and, to the extent technically feasible, program-relat-

1 ed material carried in the vertical blanking interval, or on
2 subcarriers, that may be necessary for receipt of program-
3 ming by handicapped persons or for educational or language
4 purposes. Retransmission of other material in the vertical
5 blanking interval or on subcarriers shall be within the discre-
6 tion of the cable operator.

7 “(h) A cable operator shall provide each qualified local
8 noncommercial educational television station carried in ac-
9 cordance with this section with bandwidth and technical ca-
10 pacity equivalent to that provided to commercial television
11 broadcast stations carried on the cable system and shall carry
12 the signal of each qualified local noncommercial educational
13 television station without material degradation.

14 “(i) Signals carried in fulfillment of carriage obligations
15 of a cable operator under this section shall be available as
16 part of the lowest priced tier of basic cable service offered to
17 subscribers of the cable system.

18 “(j) A cable operator shall identify, upon request by any
19 person, those signals carried in fulfillment of the requirements
20 of this section.

21 “(k) A qualified local noncommercial educational televi-
22 sion station shall not be repositioned to a different channel by
23 a cable operator unless the cable operator, at least 30 days in
24 advance of such repositioning, has provided written notice to
25 the station and all subscribers of the cable system. For pur-

1 poses of this paragraph, repositioning includes (1) assignment
2 of a qualified local noncommercial educational television sta-
3 tion to a cable system channel number different from the
4 cable system channel number to which the station was as-
5 signed as of March 29, 1990, and (2) deletion of the station
6 from the cable system.

7 “(l) Notwithstanding any other provisions of this sec-
8 tion, a cable operator shall not be required to carry any quali-
9 fied local noncommercial educational television station which
10 does not deliver to the cable system’s principal headend a
11 signal of good quality, as may be defined by the Commission
12 by regulation.

13 “(m) A cable operator shall not accept monetary pay-
14 ment or other valuable consideration in exchange for carriage
15 of the signal of any qualified local noncommercial educational
16 television station carried in fulfillment of the requirements of
17 this section, except that such a station may be required to
18 bear the cost associated with delivering a good quality signal
19 to the headend of the cable system.

20 “(n) Notwithstanding any other provisions of this sec-
21 tion, a cable operator shall not be required to add a qualified
22 local noncommercial educational television station not al-
23 ready carried under the provisions of subsection (c), where
24 such station would be considered as a distant signal for copy-
25 right purposes unless such station reimburses the operator for

1 the incremental copyright costs assessed against such opera-
2 tor as a result of such carriage.”.

3 SEC. 5. EFFECTIVE DATE.

4 The amendments made by this Act shall take effect 90
5 days after the date of enactment of this Act, except that—

6 (1) section 614(b)(2)(B) of the Communications
7 Act of 1934, as added by this Act, shall take effect
8 120 days after such date of enactment; and

9 (2) the Commission’s authority to prescribe regu-
10 lations to carry out the amendments made by this Act
11 is effective on such date of enactment.

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